

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SAMUEL RYAN,

Petitioner,

Case No. C12-727 JCC-BAT

V.

MAGGIE MILLER-STOUT.

Respondent.

REPORT AND RECOMMENDATION

The Court originally granted *pro se* petitioner Samuel Ryan’s unopposed motion to stay and abey his habeas petition because the federal action appeared to be a protective petition in the event a pending state personal restraint petition (“PRP”) was rejected for untimeliness or other procedural reasons. (Dkts. 11, 12.) Petitioner has since voluntarily dismissed his state PRP but moves to keep the federal petition stayed because he recently filed a motion to modify the underlying state criminal judgment, thereby rendering his federal petition unexhausted. (Dkt. 17.) Respondent does not oppose staying this matter until all of the state-court litigation (which no longer includes a state PRP) is completely resolved. (Dkt. 18.)

The Court finds that the parties have demonstrated good cause for staying the present matter as a “protective” habeas petition in light of petitioner’s risk of running afoul of the federal, one-year statute of limitations. *See Pace v. DiGuglielmo*, 544 U.S. 408, 416 (2005). A real

1 possibility exists that a future habeas petition would be time-barred in federal court if, rather than
2 staying this matter, the Court were to dismiss the current habeas petition. *See* 28 U.S.C.
3 § 2244(d)(1)–(2).

4 The Court recommends **GRANTING** petitioner's unopposed motion to stay and abey the
5 proceedings until his pending state-court litigation is completely adjudicated. (Dkt. 17.) The
6 Court also recommends: (1) directing **respondent** and **petitioner** each to file a status report with
7 Magistrate Judge Brian A. Tsuchida every ninety (90) days, beginning ninety (90) days from the
8 date of the order adopting this Report and Recommendation; (2) directing **petitioner** to send to
9 respondent and to the Court a copy of the mandate for his pending Criminal Rule 7.8 motion
10 within fourteen (14) days of receiving it; and (3) striking the earlier status-report deadlines, and
11 providing that respondent need not file an Answer to the federal habeas petition until forty-five
12 (45) days after the stay of proceedings is lifted.

13 As respondent does not oppose petitioner's motion, the Court recommends if this
14 recommendation is adopted, that it be approved immediately. A proposed order accompanies
15 this Report and Recommendation.

16 DATED this 27th day of June, 2012 .

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19 BRIAN A. TSUCHIDA
20 United States Magistrate Judge
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